

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5924 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PATEL MANGALBHAI MADHAVDAS

Versus

KC SAGAR, SECY. (APPEALS) REV. DEPT. & ORS.

Appearance:

MR AV TRIVEDI for Petitioners

MR VB GHARANIA for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 13/01/97

C.A.V. JUDGEMENT

1. Heard learned counsel for the parties. Challenge is made by the petitioner in this Special Civil Application to the order annexure 'A' dated -11-1976 of the respondent no.2 and the order of the revisional authority of February, 1985, annexure 'B'.

2. In the sim of village Soja, there is a land of block no.1643 admeasuring Acres 3-6 Gunthas which was

owned and possessed by the respondent no.3. The respondent no.3 sold the aforesaid land, under the registered sale deed dated 6-7-1973, for consideration of Rs.7000/- to the petitioner. Later on it appears that the son of respondent no.3 lodged an objection against the aforesaid transaction and the proceedings were initiated by the respondent no.2 for cancellation of sale deed under sec. 9 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. After notice, under the impugned order of November, 1976, the sale deed made in favour of the petitioner was declared to be invalid and further fine of Rs.50/- has been imposed. The order has also been made for eviction of the petitioner from the land in dispute. The revisional application filed by the petitioner, against the aforesaid order has also been dismissed. Hence this Special Civil Application.

3. The counsel for the petitioner contended that in view of the amended provisions of sec. 31 of the aforesaid Act, both the authorities have committed a serious illegality in declaring the sale deed of the land in dispute made in favour of the petitioner by the respondent no.3 to be invalid.

4. The counsel for the respondent on the other hand, contended that both the courts have passed the order correctly and this court sitting under Article 227 of the Constitution of India should not interfere with the same. It has next been contended that the aforesaid point which has been raised by the petitioner's counsel has not been raised before either of the authorities or even in this Special Civil Application and as such, the petitioner should not be allowed to raise this contention.

5. I have given my thoughtful consideration to the submissions made by learned counsel for the parties. I consider it appropriate to deal with the second contention made by the learned counsel for the respondent.

6. The contention which has been raised by the learned counsel for the petitioner is a new plea which has been taken by the petitioner first time in this writ petition. The contention of the counsel for the respondent to the extent that this plea was taken first time before this court in the writ petition is correct, but the plea which has been raised by the counsel for the petitioner goes to the root of the question. The counsel for the respondent does not dispute that sec.31 of the Act, aforesaid has been amended in the year 1979 meaning

thereby that this plea was not open to the petitioner before the first authority. So the plea which has been raised by the petitioner's counsel is based on admitted and uncontroverted facts. Whether as per the amended provisions of sec. 31 of the aforesaid Act, the sale deed made in favour of the petitioner of the land in dispute could have been declared to be invalid or not, is a pure question of law. No further investigation whatsoever on any fact is required to be made or gone into. In the presence of this fact, I do not consider it appropriate to shut out the petitioner from raising this plea which goes to the root of lis involved. Reference in this respect may have to the decision of the Supreme Court in the case of Shri Rattan lal Sharma vs. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School & Ors. reported in JT 1993(3) SC 487.

7. The revisional authority has not gone into the question whether the sale of land in dispute is protected under sec.31 of the Act as amended by the Gujarat Act, 9 of 1979.

8. Clause B of subsection 2 of sec. 31 as amended provides that nothing in subsection 1 shall be deemed to have apply to the transfer of holding allowed under this Act, made after 19th February, 1969, but before the date of commencement of Bombay Prevention of Fragmentation and Consolidation of Holdings (Gujarat Amendment) Act, 1979 where such transfer was of an entire holding not involving any subdivision thereof and the transferee or his successor-in-interest was occupying or was in possession of the holding so transferred immediately before the said date and had not been entitled for such holding before the said date in pursuance of the order of eviction passed by the Collector under subsection 3 of sec. 9 and such transfer shall not be, and shall be deemed to have been void on the ground that it was contrary to the provisions of this section.

9. So the matter has to be considered with reference to the aforesaid provision. The counsel for the petitioner contended that the transfer in the present case was of entire holding and not involving any subdivision.

10. In view of this fact, I consider it appropriate to set aside the orders of both the authorities impugned in this Special Civil Application. Order accordingly.

11. This Special Civil Application succeeds and the order of the respondent no.2 dated -11-1976, annexure 'A'

and order dated -2-1985, annexure `B' of respondent no.1 are quashed and set aside and the matter is sent back to the respondent no.2 to decide the matter afresh after giving notice and opportunity of hearing to the petitioner and taking into consideration the amended provisions of the Act. Rule is made absolute. No costs.

zgs/-